

**HIGH COURT OF UTTARANCHAL AT NAINITAL.**

(Court’s order whether the case is or not approved for reporting.)  
(Chapter VIII Rule 32 (2) (b))

Description of the case

Writ Petition No. 1850(S/S) 2005

Subhash Chandra Pant ----- Petitioner.

Versus

Director, School Education and others -----Respondents

Approved for reporting

~~Not approved for reporting~~

Date of decision 17<sup>th</sup> July 2006.

Initial of Judge.  
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**HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Writ Petition No. 1850(S/S)2005

Subhash Chandra Pant S/o Sri Dwarika Prasad Pant,  
Serving as Assistant Teacher L.T. Grade (Genera),  
Janta Inter College, Jamnakhal, Katulsyun,  
Block Khirshu, District Pauri. ----- Petitioner.

Versus

1. Director, School Education, Uttaranchal, Dehradun,
2. Regional Additional Director of Education,  
Garhwal Region, Pauri,
3. Joint Director of Education, Garhwal Region, Pauri,
4. District Education Officer, Pauri,
5. Committee of Management,  
Janta Inter College, Jamnakhal, Katulsyun,  
Block Khirshu, District Pauri. -----Respondents.

Sri Manoj Tewari, learned counsel for the petitioner,  
Learned Standing counsel for the State/respondent nos. 1,2,3, & 4.  
Sri S.K. Posti, learned counsel for respondent no. 5.

**Hon'ble M.M. Ghildiyal, J.**

Heard Sri Manoj Tewari, learned counsel for the petitioner, learned Standing Counsel for the State/ respondent nos. 1 to 4 and Sri S.K. Posti, learned counsel for respondent no. 5.

2. Brief facts, as narrated in the writ petition, are that the petitioner was appointed as Assistant Teacher on the post, which fell vacant on account of promotion of one Sri Aswal on the post of Lecturer. The said appointment was approved by the District Inspector of Schools, Pauri vide order dated 25<sup>th</sup> January 1993 for a period ending 14<sup>th</sup> May 1993. Aggrieved against the order of District Inspector of Schools, Pauri granting

approval merely till 14.05.1993, the petitioner preferred writ petition bearing no. 18559 of 1993 before the Allahabad High Court with the following prayers:-

- i. *“Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay future salary of the petitioner for the post of Assistant Teacher (L.T. Grade) till the joining of the regular selected candidate appointed by the Commission.*
- ii. *Issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to interfere in peaceful functioning of the petitioner as Assistant Teacher (L.T. Grade) in college till the joining of the regular selected candidate appointed by the Commission.”*

3. The Allahabad High court on 26.05.1993 passed order to the effect that *“Standing Counsel is granted six weeks time to file counter affidavit. List thereafter. Meanwhile the petitioner shall continue to work till a regular selected candidate joins the post on which Harendra Singh Aswal was working.”* And ultimately, the Allahabad High Court on 14.09.1999 passed order to the following effect:-

*“By efflux of time, this petition appears to have become infructuous. It is accordingly dismissed as infructuous, Interim order, if any, stands discharged. No cost.”*

4. The State of Uttaranchal vide Notification dated 27<sup>th</sup> January 2005 framed the Act known as “Uttaranchal Non Government Education (amendment and repeal) (Act no. 4 of 2005). Section 5 of the aforesaid Act reads as under:-

*“5. Every person who is employed in any school or college or university or other educational institution in the State of Uttaranchal shall be entitled to be appointed as a regular teacher or other educational staff in the State of Uttaranchal on the basis of the rules and regulations made by the Government of Uttaranchal in this behalf.”*

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5. From perusal of the record it reveals that the Committee of Management did not send the name of the petitioner for his regularization in view of the litigation pending before the Allahabad High court, as per the disclosure of the petitioner that the writ petition is still pending before the Allahabad High Court.

6. The Committee of Management has filed counter affidavit and in para-27 of the counter affidavit it is stated that the Committee of Management have, forwarded the papers of the petitioner for regularisation under the aforesaid Rules, as the writ petition filed by the petitioner before the Allahabad High Court was pending, as per the information given by the petitioner to the Committee of Management, though subsequently it was found that the writ petition was dismissed long back on 14.09.1999.

7. However, after coming to know about the dismissal of writ petition by the Allahabad High Court, the Committee of Management passed an order terminating the services of

petitioner on 18<sup>th</sup> January 2006. The order of termination of the services of the petitioner was sent to the District Education Officer for his approval which was rejected by him vide its order dated 4<sup>th</sup> February 2006. In the meantime the petitioner filed the present writ petition for the following reliefs:-

- a. *To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to consider the claim of the petitioner for regularization of his services on the post of Assistant Teacher L.T. Grade (General) in accordance with Section 16-GGG of U.P. Intermediate Education Act 1921 inserted vide Uttaranchal Act no. 4 of 2005,*
- b. *To issue a writ, order or direction in the nature of mandamus restraining the respondent no. 5 from harassing or victimizing the petitioner in any manner whatsoever,*
- c. *To issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstance of the case,*
- d. *Award the cost of the writ petition in favour of the petitioner.*

8. After receipt of the notices of the present writ petition, the Committee of Management asked the petitioner about the status of the stay order passed by the Allahabad High court in writ petition on 18559 of 1993. Thereafter, when it came to know that the writ petition, which was filed by the petitioner before the Allahabad High Court, was dismissed long back on 14.09.1999 but since there was an order of this Court passed on 14.12.2005 to the effect that "in the meantime the respondent no. 5 may furnish the information required by the District

Inspector of Schools, Pauri in respect of the petitioner”, the Committee of Management sent papers to the District Education Authority in pursuance of the letters issued by the District Education officer dated 4<sup>th</sup> February 2006 and further by letter no. 6911-13/2005-06 and 6<sup>th</sup> March 2006.

9. So far the prayer no. 1 of this writ petition is concerned, by which the petitioner has prayed to issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to consider the claim of the petitioner for regularization of his services on the pos of Assistant Teacher L.T. Grade (General) in accordance with Section 16-GGG of U.P. Intermediate Education Act 1921 inserted vide Uttaranchal Act no. 4 of 2005, counsel for the respondent has submitted that the petitioner is not entitled for this relief because he does not fulfill the condition laid down in Rule-5 Sub Rule- I Sub Claus-c of the Act as the stay order passed by the Allahabad High Court came to an end on 14.09.1999. Therefore, after vacating the stay order by the Allahabad High Court on 14.09.1999, the order of District Inspector of Schools dated 25<sup>th</sup> January 1993, which shows that the approval has been granted only upto the end of session i.e. till 14.05.1993, will automatically come into existence.

10. On the other hand learned counsel for the petitioner has submitted that till the Act was inserted and even till today, the petitioner is continuing in service and is getting salary under the Payment of Salary Act and, as such, he fulfills the requirement as laid down under Section 5(i) (c) of the Act.

11. Since the papers in relation to the regularization of petitioner's services have already been sent by the

respondent/Committee of Management, the respondents may take decision on the question of regularization of the petitioner's service in accordance with law.

12. With these directions, the writ petition is finally disposed of. No order as to costs.

**(M.M. Ghildiyal, J.)**

July 17, 2006:

NCM: